IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 14841 of 2005

Between:

Karneti Krishna Simha, S/o. Late Raghavulu,

R/o.Karamchedu, Karamchedu Mandal, Prakasam district.

..... PETITIONER

A N D

1 The Gram Panchayath, Karamchedu, Karamchedu Mandal,

Prakasam District, Rep. by its Panchayath Secretary,
2 The District Panchayath Officer, Prakasam District, Ongole,
3 Utukuri Venkateswarlu, S/o. Dasaiah,
R/o. Karamchedu, Karamchedu Mandal, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus of Mandamus or any other appropriate writ, order or direction declaring the action of the Respondents 1 and 3 without making any survey in forming cement road which is going through petitioners property in Survey No. 68, Karamchedu Village, Karamchedu Mandal, Prakasam District as illegal, arbitrary and violative of directions of 2nd Respondent dt. 21-6-2005 and also violative of Art. 14, 16 and 300-A of Constitution of India and issue consequential direction to the respondents not to form cement road without through survey and pass such other order or orders which are deem fit and proper in the circumstances of the case pass such other order or orders.

Counsel for the Petitioner: MR.THOTARAMAKOTESWARA RAO

Counsel for the Respondents 1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV**.**

Counsel for the Respondent No.3: Mr.M.Prabhakar Rao

The Court made the following at the admission stage **:** (order follows 2nd page)

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O R D E R :

This writ petition is filed seeking to declare the action of the respondents 1 and 3 without making any survey in forming cement road which is going through petitioner's property in survey no.68, Karamchedu village and Mandal, Prakasam district as illegal, arbitrary and violative of directions of second respondent dated 21-6-2005 and also violative of Article 14, 16 and 300-A of the Constitution of India and issue consequential direction to the respondents not to form cement road without thorough survey.

When the matter came up for admission, both the counsel conceded at the bar that the facts in this writ petition are similar and identical to the facts in WP.No.20778 of 1997, which was disposed of by a Division Bench of this court on 03-02-1998, and requested to dispose of this writ petition also in terms of the judgment in the said writ petition.

I have perused the said judgment of the Division Bench of this court, wherein it was observed as follows :

"Though this writ petition and many other writ petitions are premature,

as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.

When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements

If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to show cause as too why the proposed action shall not be taken. On receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self-government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue

Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, statusquo obtaining as on today shall continue."

The respondents are directed to issue notice to the petitioners before initiating any action in forming cement road which is going through petitioner's property in S.No.68, Karamchedu (v) (M) Prakasam district and follow due process of law in terms of the judgment of the Division Bench of this Court in WP.No.20778 of 1997, dated 03-2-1998.

Accordingly, at the admission stage, the writ petition is disposed of in terms of the said judgment of the Division Bench of this Court in WP.No. 20778 of 1997

dated 03-02-1998. The respondents are directed to follow the guidelines issued in the aforesaid judgment. However, there shall be no order as to costs.

JULY 11th, 2005. ----------

I S L. ELIPE DHARMA RAO, J

To

1 The Panchayat Secretary, Gram Panchayath, Karamchedu, Karamchedu

Mandal, Prakasam District.
2 The District Panchayath Officer, Prakasam District, Ongole,
3 Utukuri Venkateswarlu, S/o. Dasaiah,
R/o. Karamchedu, Karamchedu Mandal, Prakasam District

4 Two CCs to Govt.Pleader for Panchayat Raj & Rural Development,

High Court Buildings, High Court of AP Hyderabad. (OUT)

5 One CC to Mr.M.Prabhakar Rao, Counsel for Respondent No.3.

6 Two CD files.